

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

CLARENCE R. EVANS and
WALTRAUD EVANS,

Chapter 7
Case No. 20-60922

Debtors.

TRUSTEE'S MOTION TO SELL ESTATE'S INTEREST IN
DEBTORS' HOMESTEAD

Chapter 7 Trustee Paul A. Levine, Esq. respectfully moves the Court pursuant to 11 U.S.C. §363 (b) (1) for an order approving the Trustee's sale of the Debtors' homestead to their mortgage lender, subject to all liens and encumbrances and, in support of the motion, states as follows:

1. Debtors Clarence R. Evans and Waltraud Evans (the "Debtors") filed their voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code in this Court on August 25, 2020.

2. In their Schedule "A" the Debtors listed ownership of their homestead at 197 W. Main Street, Gouverneur, New York (the "Homestead") and valued it at \$65,474.00 Exhibit 1.

3. In their Schedule C, they properly claimed a homestead exemption in the amount of \$24,686.77. Exhibit 2. The Trustee has confirmed with Debtors' counsel that should this sale be approved and closed, the Debtors will not claim their homestead exemption against the sale proceeds.

4. They listed in their Schedule D a secured claim against the Homestead which is asserted by the mortgage lender Specialized Loan Servicing, LLC in the amount of \$40,787.23. Exhibit 3.

5. The lender has moved for relief from the stay, alleging a total amount due as of September 14, 2020 of \$45,130.84. The lender asserts that Debtors have not paid their mortgage since October 2019, or more than a year. ECF No. 9.

6. In their Statement of Intention, the Debtors indicate that they wish to surrender the Homestead. Exhibit 4.

7. While they have claimed the homestead exemption, the Debtors, who are elderly, no longer reside there.

8. The Trustee has received an offer from the mortgage holder to buy the estate's interest in the Homestead for \$5,000.00, subject to all liens and encumbrances. Exhibit 5.

9. The sale will be to ModBuild Management LLC, as Trustee for the Guardian Land Trust 197.

10. Absent the sale, the mortgage lender will foreclose.

11. With the sale, the Trustee will be able to make a modest distribution to creditors.

12. The sale price is reasonable because with the mortgage lien and claimed homestead exemption there is otherwise no equity for the estate.

WHEREFORE it is respectfully requested that the Court grant the Trustee's motion, authorize the Trustee to execute such documents as are reasonable and necessary to close the sale, confirm in its order that there shall be no homestead exemption claim against the sale proceeds and grant such other and further relief as may be just, necessary and proper.

Dated: November 18, 2020

Respectfully submitted,

/s/Paul A. Levine

Paul A. Levine, Esq.

Chapter 7 Trustee

LEMERY GREISLER LLC

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